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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/934,408	08/21/2001	Rick C. Bergman	078260-9006-00	8112
23409	7590	04/29/2005	EXAMINER	
MICHAEL BEST & FRIEDRICH, LLP 100 E WISCONSIN AVENUE MILWAUKEE, WI 53202			HAQ, NAEEM U	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 04/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/934,408

Applicant(s)

BERGMAN ET AL.

Examiner

Naeem Haq

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 03 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

This action is in response the Applicants' amendment filed on January 3, 2005.

Claim 6 has been cancelled. Claims 1-5 and 7-23 are pending and will be considered for examination.

### ***Final Rejection***

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 3-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 3 and 17 recite the limitation "...simultaneously viewed by multiple venue attendees at a venue". This limitation lacks proper written description support in the specification.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1, 2, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. (US 6,754,636 B1).**

Referring to claims 1, 2, and 23, Walker teaches a first wireless communications device associated with an attendee configured to generate an order including product ordering information (column 5, lines 1-45); a second communication device associated with a first vendor configured to receive a message concerning the order and communicate a response message indicating acceptance or rejection of the order (Figure 1A, item "400"; column 5, lines 46 – column 6, line 22; column 14, lines 1-8); a third communication device associated with a second vendor configured to receive a message concerning the order in the event the first vendor communicates a response message indicating rejection of the order, the second communication device operable to communicate a response message indicating acceptance or rejection of the order (Figure 1A, item "400"; column 5, lines 46 – column 6, line 22; column 14, lines 1-8). Walker does not explicitly teach that the second and third communication devices are wireless. However, Walker teaches that the retailer (i.e. vendor) devices communicate through the same communication network used by the buyer device (column 6, lines 59-65). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have the first and second vendors communicate via wireless devices in the invention of Walker. One of ordinary skill in the art would have been

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motivated to do so in order to allow the vendors to use the same communication network used by the buyer, as taught by Walker. Walker also does not teach that the order includes attendee location or payment information. However, the Examiner notes that this limitation is not functionally or structurally involved in the steps or elements of the recited method and system. Therefore this limitation is deemed to be nonfunctional descriptive material. The steps and elements of the method and system would be the same regardless of what information the order contained. The differences between the content of the Applicants' order and the prior art are merely subjective. Thus this nonfunctional descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) also see MPEP 2106. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to place any information in the order of Walker's invention because such information does not functionally or structurally relate to the steps or elements of the claimed method and system and because the subjective interpretation of information does not patentably distinguish the claimed invention.

Walker does not explicitly teach the step of generating a response message with the third communication device indicating acceptance or rejection of the order. However, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate this step into Walker's invention. One of ordinary skill in the art would have been motivated to do so in order to find a vendor that was capable of fulfilling the buyer's order, as suggested by Walker.

**Claims 3-5 and 7-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Showghi et al. (US 6,473,739 B1) in view of Official Notice.**

Referring to claims 3, 5, 17, 18, and 22, Showghi teaches a display board configured to display information and configured to be simultaneously viewed by multiple venue attendees at a venue (Figure 2, item "30"); a network (Figure 2, item "32"); a first computer device coupled to the network and including a database of users (Figure 2, item "12"); at least one wireless communication device coupled to a computer device via the network, the at least one wireless communication device operable to generate an order for items available at the venue and transmit the order to the computer device (Figure 2, items "22", "24", and "26"; column 7, lines 34-56); a venue computer device coupled to the first computer device via a network and to the display board (Figure 2, item "16"); at least one vendor station coupled to the vendor computer device, the vendor station operable to query the first computer device and display order on a monitor (Figure 2, item "18"). Showghi does not teach that the venue computer is configured to generate instruction to be displayed on the display board. However, Official Notice is taken that it is old and well known in the art for a computer to display information on a web site. Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the venue computer of Showghi to display instructions on the display board of Showghi. One of ordinary skill in the art would have been motivated to do so in order to display relevant content to users who view the display board of Showghi. Showghi does not teach that the computer device, which the wireless device is connected to, is the first computer device. However, as

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noted above, Showghi teaches that the wireless device is connected to a computer device to perform the function of communicating an order for items (Figure 2, items "22", "24", and "26"; column 7, lines 34-56). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to send the user's order to any of the computers disclosed by Showghi, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70. Showghi does not teach that the display board displays instructions for ordering via a wireless device, that the database of the first computer includes user's seating location at the venue, or that the step of establishing an account is done prior to arriving at the venue. However, the Examiner notes that these limitations are not functionally or structurally involved in the steps or elements of the recited method and system. Therefore these limitations are deemed to be nonfunctional descriptive material. The steps and elements of the method and system would be the same regardless of what instructions were displayed, what information the database contained, or when the registration occurred. The differences between the content of the Applicants' invention and the prior art are merely subjective. Thus this nonfunctional descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) also see MPEP 2106. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to display any information in the display board of the Showghi, place any information in the database of Showghi, or have the user register at anytime in the

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invention of Showghi because such information does not functionally or structurally relate to the steps or elements of the claimed method and system and because the subjective interpretation of information does not patentably distinguish the claimed invention.

Referring to claims 4 and 7-15, Showghi does not teach that the display board includes a scoreboard, space in a program, television, order card, signup page, account management page, or a system administrator page. However, the Examiner notes that these limitations are not functionally involved in the elements of the recited system. Therefore these limitations are deemed to be nonfunctional descriptive material. The structure of the system would be the same regardless of what information the display board included. The difference between the Applicants' display system and the prior art is merely subjective. Thus this nonfunctional descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) also see MPEP 2106. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to place include any information on the display of Showghi because such information does not functionally relate to the elements of the claimed system and because the subjective interpretation of information does not patentably distinguish the claimed invention.

Referring to claims 16 and 21, Showghi teaches a voice command processor to process voice-based orders (column 4, lines 59-65; column 7, lines 9-43).



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Referring to claims 19 and 20, Showghi does not teach printing order information or tracking order fulfillment. However, Official Notice is taken that it is old and well known in the art to print order information and to track order fulfillment. Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate these features into the system and method of Showghi. One of ordinary skill in the art would have been motivated to do so in order to create a record of the transaction in the event a dispute occurred at a later time.

### **Conclusion**

Since the Applicants have failed to seasonably challenge the Examiner's Official Notice presented in the previous Office Actions, the Examiner now interprets all Official Notices as admitted prior art. *Applicant must seasonably challenge well known statements and statements based on personal knowledge when they are made. In re Selmi, 156 F.2d 96, 70 USPQ 197 (CCPA 1946). If Applicant does not seasonably traverse the well known statement during examination, then the object of the well known statement is taken to be admitted prior art. In re Chevenard, 139 F.2d71, 60 USPQ 239 (CCPA 1943). Also see MPEP 2144.03.*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naeem Haq whose telephone number is (571)-272-6758. The examiner can normally be reached on M-F 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn W. Coggins can be reached on (571)-272-7159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

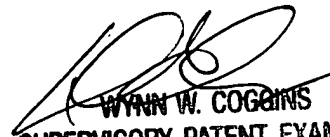
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**Naeem Haq**, Patent Examiner

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April 21, 2005



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